

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1017

Introduced by Assembly Members Portantino and Brownley

February 27, 2009

An act to ~~amend Section 680~~ *add and repeal Section 680.1* of the Penal Code, relating to sexual assault crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1017, as amended, Portantino. Sexual assault crimes.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, authorizes a law enforcement agency investigating certain felony sex offenses to, upon the request of the victim, and subject to the commitment of resources, inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from the case, whether or not that information has been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, as specified. Existing law also requires that the victim be given written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations, as specified. Existing law

provides that the sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under the Sexual Assault Victims' DNA Bill of Rights is standing to file a writ of mandamus to require compliance with these notification provisions.

~~This bill would require DNA analysis of rape kit evidence to be completed after the rape kit is obtained by the law enforcement agency. The bill would give a sexual assault victim standing to file a writ of mandamus to require compliance with these provisions. The bill would delete language subjecting certain victim rights to the commitment of sufficient resources to respond to requests. The bill would require a law enforcement agency, if it does not analyze the DNA evidence of an assailant of a sexual assault victim within 6 months of obtaining the rape kit evidence, to inform the victim of this fact. The bill would also require each law enforcement agency responsible for taking or processing rape kit evidence to annually report to the Department of Justice the total number of rape kits in its possession that it has not tested or analyzed, as specified.~~

~~The bill would further require each law enforcement agency to report to the Department of Justice the total number of sexual assault crimes reported in its jurisdiction that would require the offender convicted of the crime to register as a sex offender. By imposing new duties on local government agencies, the bill would impose a state-mandated local program.~~

~~*This bill would require law enforcement agencies responsible for taking or processing rape kit evidence to annually report information pertaining to the number of rape kits received, tested, and destroyed, to the Department of Justice, as specified. The bill would also require each law enforcement agency to annually report to the Department of Justice the total number of sexual assault crimes reported in its jurisdiction that would require an offender convicted of the crime to register as a sex offender, as specified. These provisions would become inoperative on July 1, 2015, and would be repealed on January 1, 2016.*~~

~~*By imposing additional reporting duties on local law enforcement agencies, this bill would impose a state-mandated local program.*~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 680.1 is added to the Penal Code, to read:
2 680.1. (a) Each law enforcement agency responsible for taking
3 or processing rape kit evidence shall annually report, by July 1 of
4 each year, the following to the Department of Justice:
5 (1) The total number of rape kits received during the preceding
6 calendar year.
7 (2) The total number of rape kits tested during the preceding
8 calendar year.
9 (3) The total number of untested rape kits in its possession as
10 of January 1 of the reporting year.
11 (4) The total number of rape kits destroyed during the preceding
12 calendar year.
13 The initial report to the department pursuant to this subdivision
14 shall include available statistics for the previous five years.
15 (b) Each law enforcement agency shall annually report to the
16 Department of Justice the total number of sexual assault crimes
17 reported in its jurisdiction that would require an offender convicted
18 of the crime to register as a sex offender pursuant to Section 290.
19 The report shall be provided to the department in a form that
20 reports the crimes by the code section violated.
21 (c) This section shall remain operative only until July 1, 2015,
22 and shall be repealed on January 1, 2016, unless a later enacted
23 statute, that is enacted before January 1, 2016, deletes or extends
24 that date.
25 ~~SECTION 1. Section 680 of the Penal Code is amended to~~
26 ~~read:~~
27 ~~680. (a) This section shall be known as and may be cited as~~
28 ~~the "Sexual Assault Victims' DNA Bill of Rights."~~
29 ~~(b) The Legislature finds and declares all of the following:~~
30 ~~(1) Deoxyribonucleic acid (DNA) and forensic identification~~
31 ~~analysis is a powerful law enforcement tool for identifying and~~
32 ~~prosecuting sexual assault offenders.~~

~~(2) Victims of sexual assaults have a strong interest in the investigation and prosecution of their cases.~~

~~(3) Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.~~

~~(4) The growth of the Department of Justice's Cal-DNA databank and the national databank through the Combined DNA Index System (CODIS) makes it possible for many sexual assault perpetrators to be identified after their first offense, provided that rape kit evidence is analyzed in a timely manner.~~

~~(5) Timely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California.~~

~~(e) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 shall perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to Section 803.~~

~~(d) For the purpose of this section, "law enforcement" means the law enforcement agency with the primary responsibility for investigating an alleged sexual assault.~~

~~(e) (1) Upon the request of a sexual assault victim the law enforcement agency investigating a violation of Section 261, 261.5, 262, 286, 288a, or 289 shall inform the victim of the status of the DNA testing of the rape kit evidence or other crime scene evidence from the victim's case. The law enforcement agency may, at its discretion, require that the victim's request be in writing. The law enforcement agency may respond to the victim's request with either an oral or written communication, or by electronic mail, if an electronic mail address is available. This subdivision does not require that the law enforcement agency communicate with the victim or the victim's designee regarding the status of DNA testing absent a specific request from the victim or the victim's designee.~~

~~(2) Sexual assault victims have the following rights:~~

~~(A) The right to be informed whether or not a DNA profile of the assailant was obtained from the testing of the rape kit evidence or other crime scene evidence from their case.~~

1 ~~(B) The right to be informed whether or not the DNA profile~~
2 ~~of the assailant developed from the rape kit evidence or other crime~~
3 ~~scene evidence has been entered into the Department of Justice~~
4 ~~Data Bank of case evidence.~~

5 ~~(C) The right to be informed whether or not there is a match~~
6 ~~between the DNA profile of the assailant developed from the rape~~
7 ~~kit evidence or other crime scene evidence and a DNA profile~~
8 ~~contained in the Department of Justice Convicted Offender DNA~~
9 ~~Data Base, provided that disclosure would not impede or~~
10 ~~compromise an ongoing investigation.~~

11 ~~(3) This subdivision is intended to require law enforcement~~
12 ~~agencies to notify victims of information that is in their possession.~~
13 ~~It is not intended to affect the manner of or frequency with which~~
14 ~~the Department of Justice provides this information to law~~
15 ~~enforcement agencies.~~

16 ~~(f) DNA analysis of rape kit evidence shall be completed after~~
17 ~~the rape kit is obtained by the law enforcement agency. However,~~
18 ~~if the law enforcement agency does not analyze the DNA evidence~~
19 ~~for the assailant of a victim of a sexual assault offense specified~~
20 ~~in Section 261, 261.5, 262, 286, 288a, or 289 within six months~~
21 ~~of obtaining the rape kit evidence, the victim shall be informed,~~
22 ~~either orally or in writing, of that fact by the law enforcement~~
23 ~~agency.~~

24 ~~(g) If the law enforcement agency intends to destroy or dispose~~
25 ~~of rape kit evidence or other crime scene evidence from an~~
26 ~~unsolved sexual assault case prior to the expiration of the statute~~
27 ~~of limitations as set forth in Section 803, a victim of a violation~~
28 ~~of Section 261, 261.5, 262, 286, 288a, or 289 shall be given written~~
29 ~~notification by the law enforcement agency of that intention.~~

30 ~~(h) Written notification under subdivision (f) or (g) shall be~~
31 ~~made at least 60 days prior to the destruction or disposal of the~~
32 ~~rape kit evidence or other crime scene evidence from an unsolved~~
33 ~~sexual assault case where the election not to analyze the DNA or~~
34 ~~the destruction or disposal occurs prior to the expiration of the~~
35 ~~statute of limitations specified in Section 803.~~

36 ~~(i) A sexual assault victim may designate a sexual assault victim~~
37 ~~advocate, or other support person of the victim's choosing, to act~~
38 ~~as a recipient of the above information required to be provided by~~
39 ~~this section.~~

~~(j) It is the intent of the Legislature that a law enforcement agency responsible for providing information under subdivision (e) do so in a timely manner and, upon request of the victim or the victim's designee, advise the victim or the victim's designee of any significant changes in the information of which the law enforcement agency is aware. In order to be entitled to receive notice under this section, the victim or the victim's designee shall keep appropriate authorities informed of the name, address, telephone number, and electronic mail address of the person to whom the information should be provided, and any changes of the name, address, telephone number, and electronic mail address, if an electronic mailing address is available.~~

~~(k) A defendant or person accused or convicted of a crime against the victim shall have no standing to object to any failure to comply with this section. The failure to provide a right or notice to a sexual assault victim under this section may not be used by a defendant to seek to have the conviction or sentence set aside.~~

~~(l) Each law enforcement agency responsible for taking or processing rape kit evidence shall annually report to the Department of Justice the total number of rape kits in its possession that it has not tested or analyzed. The law enforcement agency shall include in its report to the department the number of untested or unanalyzed rape kits in its possession by year, covering at least the previous five years.~~

~~(m) Each law enforcement agency shall annually report to the Department of Justice the total number of sexual assault crimes reported in its jurisdiction that would require an offender convicted of the crime to register as a sex offender pursuant to Section 290. This information shall be provided to the department by the code section or sections violated.~~

~~(n) The sole civil or criminal remedy available to a sexual assault victim for a law enforcement agency's failure to fulfill its responsibilities under this section is standing to file a writ of mandamus to require compliance with subdivision (f) or (g).~~

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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